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3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE EASTERN DISTRICT OF CALIFORNIA
6
7

8 **MARTIN SMITH, ET AL.,**

9 Plaintiff,

10 V.

11 **MERCK CO., INC.,**

12 Defendants.

NO. 2:07-CV-01608-GEB-KJM

13
14
15 ORDER SETTING STATUS
16 (PRETRIAL SCHEDULING)
17 CONFERENCE

18 This action has been assigned to Judge Garland E.
19 Burrell, Jr. Pursuant to the provisions of Federal Rule of Civil
20 Procedure 16, IT IS ORDERED that:

21 1. A status (pretrial scheduling) conference is set for
22 October 29, 2007 at 09:00 AM, before Judge Burrell in
23 Courtroom 10 of the above-entitled court;

24 2. All parties to the action shall appear by counsel (or
25 in person if acting without counsel; however, pursuant to Local
Rule 83-183, a corporate party or other entity may not appear in
propria persona and must appear through counsel);

26 3. Concurrently with the service of process, or as soon
27 thereafter as possible, plaintiff(s) shall serve upon each of the
28 parties named herein, and upon all parties subsequently joined by
plaintiff, a copy of this order, and shall file with the Clerk of
Court a certificate reflecting such service. Any party who
implies a third party defendant shall serve upon that party a copy
of this order, and shall file with the Clerk of Court a certificate
reflecting such service;

1 4. In the event this action was originally filed in a
 2 state court and was thereafter removed to this court, the removing
 3 party or parties shall, immediately following such removal, serve
 4 upon each of the other parties named herein and upon all parties
 5 subsequently joined, a copy of this order and shall file with the
 6 Clerk of Court a certificate reflecting such service;

7 5. At least twenty-one (21) calendar days before the
 8 scheduling conference is held, the parties shall confer and develop
 9 a proposed discovery plan, as required by Federal Rule of Civil
 10 Procedure 26(f);

11 6. The parties shall file a Joint Status Report with the
 12 court not later than fourteen (14) days prior to the scheduling
 13 conference. The report shall briefly set forth the views of each
 14 party on the following matters:

- 15 a) Status of service of process on parties not yet
 16 served;
- 17 b) Possible joinder of additional parties;²
- 18 c) Anticipated amendment of pleadings;
- 19 d) The basis for jurisdiction and venue;
- 20 e) Anticipated motions with suggested dates;
- 21 f) Anticipated and outstanding discovery;³
- 22 g) A written report outlining the proposed discovery
 23 plan required by Federal Rule of Civil Procedure 26(f). The
 24 discovery plan shall indicate the parties' views and
 25 proposals concerning:

19 ¹ The failure of one or more of the parties to participate in
 20 the preparation of the Joint Status Report does not excuse the other
 21 parties from their obligation to timely file a status report in
 22 accordance with this Order. In the event a party fails to participate
 23 as ordered, the party timely submitting the status report shall
 24 include a declaration explaining why it was unable to obtain the
 25 cooperation of the other party or parties.

26 ² Plaintiff(s) shall indicate in the Joint Status Report a
 27 date by when the identities of any "Doe" defendants are expected to be
 28 discovered. Failure to set forth specific information regarding the
 29 time Plaintiff(s) needs to identify any "Doe" defendants will be
 30 deemed an abandonment of any claims against such defendants, and a
 31 dismissal order will follow.

32 ³ Federal Rule of Civil Procedure 26 requires, absent a contrary
 33 stipulation, initial disclosures to be made as provided in that Rule.
 34 Any objection to the initial disclosures and the basis therefor
 35 must be included in the Joint Status Report.

1 (1) what changes should be made in the timing,
2 form, or requirement for disclosures under Rule
3 26(a), including a statement as to when
disclosures under subdivision (a) (1) were made
or will be made;

4 (2) the subjects on which discovery may be
5 needed, when discovery should be completed, and
whether discovery should be conducted in phases
6 or be limited to or focused upon particular
issues; and

7 (3) what changes should be made in the
8 limitations on discovery imposed under the
Federal Rules of Civil Procedure or the Local
9 Rules, and what other limitations should be
imposed;

10 h) Scheduling of future proceedings, including
11 suggested timing of the disclosures of expert
witnesses and information required by Rule 26(a)(2),
12 completion dates for discovery and law and motion,⁴
and dates for final pretrial conference and trial;
13 i) Estimate of trial time;
14 j) Appropriateness of special procedures such as
15 reference to a special master or agreement to try
the matter before a magistrate judge pursuant to 28 U.S.C.
§ 636(c);
16 k) Modification of standard pretrial procedures because
17 of the simplicity or complexity of the case;
18 l) Whether the case is related to any other case
19 on file in this district, including the bankruptcy
courts of this district;
20 m) Prospects for settlement, including whether a
21 settlement conference should be scheduled and
whether the parties will stipulate to the trial
judge acting as settlement judge;

23 ⁴ In completing this portion of the status report, the parties
24 are advised that Judge Burrell's typical pretrial scheduling
procedures require: 1) that initial expert disclosures be made 150
25 days prior to the completion of discovery; 2) that rebuttal expert
disclosures be made 120 days prior to the completion of discovery; 3)
26 that discovery be completed 90 days prior to the final pretrial
conference; 4) that law and motion is cut off 60 days before the final
27 pretrial conference; and 5) that the final pretrial conference will be
held 90 days before the trial.

1 n) Any other matter that may be conducive to the just
2 and expeditious disposition of the case.

3 7. Following the status conference, a formal order will
4 be issued regarding future proceedings in the case. Requests to
5 modify or vacate any date set forth in the order are not favored
6 and will not be granted absent good cause.

7 8. The parties are advised that failure to file a Joint
8 Status Report in accordance with this order may result in the
9 imposition of sanctions.

10 9. The parties are required to immediately notify the
11 courtroom deputy and chambers of any settlement or other
12 disposition of the case. L.R. 16-160. In addition to notifying
13 chambers orally, the parties shall file a notice of settlement in
14 the Clerk's Office within three (3) days which sets forth a date by
which dispositional documents will be filed.

15 10. Motions shall be filed in accordance with Local Rule
16 78-230(b). Opposition papers shall be filed in accordance with
17 Local Rule 78-230(c). Any party that does not oppose the granting
18 of the motion shall file a statement of non-opposition as required
19 by Local Rule 78-230(c). The failure to file an opposition or
20 statement of non-opposition in accordance with Local Rule 78-230(c)
21 may be deemed consent to the granting of the motion and the Court
22 may dispose of the motion summarily. Brydges v. Lewis, 18 F.3d
23 651, 652-53 (9th Cir. 1994).

24 IT IS SO ORDERED.

25 DATE: August 7, 2007

26 GARLAND E. BURRELL, JR.
27 UNITED STATES DISTRICT JUDGE

28 by: /s/ A. Kastilahn
Deputy Clerk